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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,109	10/28/2003	Armand P. Neukermans	12485-002003	4733
26161	7590	02/23/2005	EXAMINER	
FISH & RICHARDSON PC 225 FRANKLIN ST BOSTON, MA 02110			DINH, JACK	
			ART UNIT	PAPER NUMBER
			2873	

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/695,109	Applicant(s) NEUKERMANS ET AL.	
	Examiner Jack Dinh	Art Unit 2873	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-38 is/are pending in the application.
- 4a) Of the above claim(s) 37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27-36, 38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>DETAILED ACTION</u> . |

DETAILED ACTION

Claim Objections

Claim 29 is objected to because of the following informalities. It is believe that the term “arraigning” on line 2 is misspelled. Appropriate correction is required.

Claim 38 is objected to because of the following informalities. Applicant’s argument filed 10/26/04, page 2, third paragraph, lines 1-2, the Applicant stated that claim 38, “as amended” recites ... However, claim 38 as filed on 10/26/04 or 12/01/04 were kept in its “original” form. Therefore, it is unclear whether claim 38 was amended or not. The rejection below is based on the claim 38 as originally filed. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 27-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding independent claim 27, “a first substrate material” was disclosed without disclosing the second substrate material.

Regarding claim 35, “at least one of the substrate materials” lacks antecedent basis.

Claims 28-36 are rejected based upon the rejected base claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 38 is rejected under 35 U.S.C. 102(b) as being unpatentable by Hornbeck (US Patent 5,583,688).

Regarding claim 38, Hornbeck (figure 1) is interpreted as disclosing a micro-mirror strip assembly comprising a frame, an array of two-dimensional deflecting mirrors 102 mounted in the frame, and dams disposed between the mirrors to block viscous interaction between each of the two dimensional deflecting mirrors and adjacent ones of the two-dimensional deflecting mirrors in the array (col. 9, lines 60-67).

Allowable Subject Matter

Claims 27-36 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. Regarding claim 27, the prior art fails to disclose a method of fabricating a micromirror structure by forming a pyramid structure from a substrate material, and defining electrodes on the pyramidal structure for positioning a mirror disposed adjacent to the pyramidal structure.

Response to Arguments

Applicant's arguments filed 10/26/04 have been fully considered but they are not persuasive. In the argument, page 2, third paragraph, lines 1-2, the Applicant stated that claim 38, "as amended" recites ... However, claim 38 as filed on 10/26/04 or 12/01/04 were kept in its "original" form. Therefore, it is unclear whether claim 38 was amended or not. Claim 38, as explained above, will be treated as originally filed. Due to this conflicting status of the claim, only parts of the argument where applicable to the claim as originally filed will be responded. The Applicant relies on Figures 8A-8C and the specification to distinguish the additional structures of dams from the prior art. However, none of these features are disclosed in the claim. Therefore, the claim language can be interpreted by its broadest interpretation. As shown above, the prior art met all the claimed limitations in its broadest interpretation.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack Dinh whose telephone number is 571-272-2327. The examiner can normally be reached on M-F (9:30 AM - 6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Georgia Y. Epps can be reached on 571-272-2328. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jack Dinh


Georgia Epps
Supervisory Patent Examiner
Technology Center 2800